

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

BANNEKER VENTURES, LLC  
5 Choke Cherry Road, Suite 378  
Rockville, MD 20850

Plaintiff,

v.

Case No.: \_\_\_\_\_

JIM GRAHAM,  
In His Official and Personal Capacities  
1350 Pennsylvania Avenue, NW, Suite 105  
Washington, DC 20004

JOSHUA A. ADLER  
In His Official and Personal Capacities  
4328 8th Street NW  
Washington, DC 20011

ROBB M. LAKRITZ  
In His Official and Personal Capacities  
4328 8th Street NW  
Washington, DC 20011

LAKRITZ ADLER DEVELOPMENT, LLC  
4328 8th Street NW  
Washington, DC 20011

Serve: Registered Agent  
Joshua A. Adler  
4328 8th Street NW  
Washington, DC 20011

and

WASHINGTON METROPOLITAN  
AREA TRANSIT AUTHORITY  
600 Fifth Street, N.W.  
Washington, DC 20001

Serve: Registered Agent  
Carol O'Keefe, Esquire  
General Counsel  
WMATA

600 Fifth Street, N.W.  
Washington, DC 20001

Defendants.

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**COMPLAINT AND DEMAND FOR JURY TRIAL**

BANNEKER VENTURES, LLC (“Banneker”), by and through their attorneys, Brian K. McDaniel, Esq., and McDaniel and Associates, P.A., brings this action against Defendants JIM GRAHAM (“Graham”), JOSHUA A. ADLER (“Adler”), ROBB M. LAKRITZ (“LaKritz”), WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY (“WMATA”) and on the following grounds: 1.) Breach of Contract; 2.) Breach of Implied Covenant of Good Faith and Fair Dealing; 3.) Tortious Interference With a Prospective Economic Advantage; 4.) Tortious Interference with a Contract; 5.) Unjust Enrichment; 6.) Fraud and 7.) Civil Conspiracy.

**I. NATURE OF THE ACTION**

1. This action involves a contract to improve real property owned by WMATA and located in the District of Columbia along the 700 and 800 blocks of Florida Avenue, NW, in the District of Columbia (the “Site”). The property at issue is located above the Shaw-Howard/Florida Avenue Metrorail train station and is commonly referred to as the “Jazz at Florida Avenue Project” (hereinafter the “Project”).

2. Banneker, after an exhaustive, year-long bid process, was selected by WMATA as the Site developer. Prior to selection, Banneker was required to post One Hundred Thousand Dollars (\$100,000.00) as a Proposal Deposit and did post such deposit. Thereafter, in June 2008, having been selected as the developer of the Site (the “Selected Developer”), Banneker was required to and did post an additional One Hundred Thousand Dollars (\$100,000.00) in order to

obtain the exclusive rights to negotiate with WMATA for the development of the Site. One of these deposits, along with other delineated expenditures, were not recovered by Banneker.

3. From June 2008 until March 2010, Banneker participated in protracted negotiations with WMATA to finalize a Joint Development Agreement (“JDA”), which would allow Banneker to proceed with the construction of a mixed-use residential and retail project, including more than one hundred (100) new residential units and ground floor retail space (the “Project”).

4. Beginning in the fall of 2007, Graham, then both a member of the WMATA Board of Directors<sup>1</sup> and the Council of the District of Columbia, unlawfully, maliciously and purposefully interfered with Banneker’s attempts to finalize the JDA, the pertinent lease and other relevant agreements with WMATA. Graham’s activities were coordinated with public officials and private individuals with a vested interest in the Project.

5. Graham, both privately and publicly, repeatedly and vociferously, objected to Banneker’s selection as the developer of the Site, the completion of the original and modified Term Sheet, JDA and ultimately Banneker’s servicing of the JDA in favor of LaKritz Adler Development (“LaKritz Adler”). LaKritz Adler, another development company that has close ties to Graham and is a major contributor to Graham’s D.C. Council campaigns and constituent services fund, had participated in the original bid process for the Site but had not been selected by WMATA as the Selected Developer of the Site.<sup>2</sup>

6. Graham participated in at least a dozen meetings with Banneker, and specifically, with Warren J. Williams, Jr., one of its then-principals (“Williams”), Adler, LaKritz and Rosalyn Doggett (“Doggett”) where he attempted to improperly influence this competitively awarded

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<sup>1</sup> Graham served as a voting member of the WMATA Board of Directors for 11 years, from 2007 – 2010.

<sup>2</sup> Graham’s improper conduct and repeated, questionable interference with this competitively awarded contract to Banneker represented a proverbial second bite at the apple for LaKritz Adler, which actually turned into eight bites at the apple (see footnote 60). It is now clear that Graham’s actions were in violation of the D.C. criminal and civil codes, D.C. Council’s Ethics Code and WMATA Code of Ethics.

project and modify both the terms of and participation in the Project to benefit LaKritz Adler.

Graham's statements and actions during these meetings demonstrate his express intent to frustrate the efforts of WMATA's staff and WMATA's Board of Directors (the "Board") in order to advance LaKritz Adler's interest, while maligning Banneker, and impeding WMATA's approval and implementation of Banneker's contract.

7. In May 2008, Graham actively and repeatedly engaged in bid suppression and bid rigging efforts when he offered one of Banneker's then-principals an illicit quid pro quo. ***Graham offered his vote as a member of the D.C. Council to approve a lucrative D.C. lottery contract, in exchange for Banneker withdrawing from the above referenced WMATA Project.*** His goal was to replace Banneker with LaKritz Adler. This could only be done if Graham thwarted Banneker's project or if Banneker withdrew from the WMATA project. Graham actively and overzealously, sought to derail Banneker's contract throughout this protracted period when it refused to withdraw from the WMATA project as directed to do so by Graham.

8. Upon information and belief, after Banneker rejected Graham's offer to participate in the illegal bid suppression and bid rigging scheme, Graham sought to involve other public officials in his efforts in June 2008, when he actively colluded with the District of Columbia's Office of the Chief Financial Officer's ("OCFO") staff and WMATA staff and Board to retaliate against Banneker for its refusal to acquiesce to his improper demands.

9. In June 2008, according to a long-suppressed internal OCFO investigative report<sup>3</sup> (the "Andary Report"), Graham met with the District's Chief Financial Officer Natwar Gandhi ("Gandhi") and requested a criminal investigation of the OCFO's then Director of Contracts,

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<sup>3</sup> The Andary Report concluded that "[t]he investigation revealed . . . inappropriate actions by Mr. Graham with respect to the Council's consideration of the Lottery contract;" "Mr. Graham was not candid..."; and that "... Graham was trying to negotiate with Williams to back off the WMATA contract so Graham could re-bid the contract and another one of the bidders, who was Graham's favorite contractor, could get the contract."

Eric W. Payne (“Payne”). Graham’s investigation request was pretextually motivated by a desire to report “wrongdoing.” The Andary Report revealed otherwise and confirmed that the true purpose of Graham’s false criminal allegation was to place additional pressure on the OCFO’s Director of Contracts, the decision maker on the lucrative lottery contract of which one of Banneker’s then-principals, Williams, was a party, to either remove Williams from the lottery contract or to cause the contract to be rebid.

10. Graham used his WMATA Board position to derail the WMATA project with Banneker. He began by convincing the Board to add affordable housing requirements to the Project, which materially changed the financial terms of the Initial Term Sheet that Banneker had with WMATA and decreased the value of the Project that Banneker had negotiated with the Staff.

11. Afterwards, when Banneker refused to include LaKrtiz Adler in the Project at the insistence of Graham, and despite WMATA staff’s continued recommendations to approve a joint development agreement or revised Term Sheet with Banneker which included the financial impact that the affordable housing units had on the Project, Graham convinced the Board to **not** approve the joint development agreement or revised Term Sheet.

12. Instead, the Board intentionally and unlawfully allowed the time period of Banneker’s exclusive right to lapse, in bad faith and without any explanation in an attempt to reopen the project to bids from two other developers, including LaKritz Adler, whose original submission had been rejected in favor of Banneker’s. The Board, led by Graham in an orchestrated manner with the District’s other Principal Director, and in an Executive Session of the Board, simply tabled its decision regarding Banneker’s development of the Site, as agreed. The Board’s failure to consider, in good faith, the terms negotiated by Banneker and WMATA violated the approved Term Sheet between Banneker and WMATA regarding implementation of the Project. Further,

it violated Banneker's rights, and effectively breached its agreement to enter into an agreement. Finally, it breached its implied covenant of good faith and fair dealing, particularly since Banneker had bargained for and tendered monetary consideration, for the exclusive right to implement the WMATA-approved Project.

## **II. JURISDICTION AND VENUE**

13. This Court has original jurisdiction in this matter pursuant to D.C. Code § 9-1107.01(81).

14. This Court has personal jurisdiction over Defendants Graham, Adler, LaKritz, LaKritz Adler and WMATA under D.C. Code §§ 9-1107.01(81).

15. Venue is proper in this Court because the acts and omissions of Defendants all occurred in the District of Columbia.

## **III. PARTIES**

16. Plaintiff, BANNEKER VENTURES, LLC, is a limited liability company formed pursuant to the laws of the District of Columbia, and maintains offices in the District of Columbia. Banneker is a real estate firm that specializes in providing construction and development services to government and commercial clients. Banneker's principal owner is Omar A. Karim.

17. At the time of the claims involved in this case, Defendant WMATA was the owner of the Site. At all times relevant to this case, WMATA employees were acting within the course and scope of their employment or as agents of WMATA.

18. WMATA was created by an Interstate Compact between Virginia, Maryland and the District of Columbia. WMATA has the power to sue and be sued, and has waived sovereign immunity with respect to the subject matters of this suit.

19. Among other things, the Compact gives WMATA the authority to enter into contracts to sell or lease property that it owns. The Compact further requires that WMATA establish policies and procedures relating to its contracting and procurement practices.

20. At the time of the claims involved in this case, Defendant Graham was a District of Columbia Councilmember and a member of the WMATA Board of Directors. He is also a resident of the District of Columbia. Graham's actions herein occurred both in his individual personal capacity and as an agent of WMATA and the D.C. Council, and as such he is being sued accordingly.

21. Upon information and belief, at the time of the claims involved in this case, Defendants Joshua A. Adler ("Adler"), Robb LaKritz ("LaKritz") and LaKritz Adler Development ("LaKritz Adler") all conducted business in the District of Columbia. Adler's and LaKritz's actions herein occurred both in their individual capacities and as principals and agents of LaKritz Adler, and they are being sued accordingly.

#### **IV. FACTS**

##### **Solicitation Stage: Pre-Selection of Banneker by WMATA**

22. In the Spring of 2007, WMATA issued a Request for Expressions of Interest ("REOI") for the redevelopment of three (3) WMATA-owned parcels located on the 700 and 800 blocks of Florida Avenue, NW, in the District of Columbia (the "Site").

23. On May 31, 2007, Banneker and eleven (11) other developers submitted a Response to WMATA regarding the REOI.<sup>4</sup>

24. As part of its efforts to develop the rest of the 700 block of Florida Avenue, Banneker contacted Howard University, which owned the adjacent property to one of WMATA's parcels (which currently sits a CVS store). Banneker's objective was to expand the Banneker

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<sup>4</sup> Bondi report, p.11.

development project to either include the Howard-owned parcel as part of the WMATA project, or develop a complementary project adjacent to the WMATA project.

25. On August 24, 2007, WMATA issued a Joint Development Solicitation to six (6) of the twelve (12) developers that responded to the REOI, including one development team led by Banneker and one development team led by LaKritz Adler.

26. Upon information and belief, LaKritz Adler is and has been a major financial contributor to Graham's D.C. Council campaigns, constituent services fund and other Graham projects. In one D.C. Campaign Finance Report alone, during which Banneker was the Selected Developer of the Site, the principals of LaKritz Adler (LaKritz and Adler) individually as well as 10 other firms that they control made maximum campaign contributions totaling more than \$10,000.00 to Graham. Eight (8) of these firms as well as Lakritz and Adler share the same address (4328 8th Street NW, Washington, DC).<sup>5</sup>

27. Karim was provided information from Graham by the then-other principal Director of WMATA from the District that it was ***Graham's expectation that before approval of the joint development agreement by WMATA, Banneker and Karim would host a fundraiser for Graham's D.C. Council race and contribute to his Council campaign.*** Karim never agreed to participate in such an endeavor and to date, neither Banneker, nor any of its employees (including Karim), made financial contributions to Graham's campaigns for D.C. Council, constituent services fund or other Graham projects.

28. The JDS provided that upon approval of a Term Sheet between the Selected Developer and WMATA, a JDA would be negotiated and completed within 150 days following the

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<sup>5</sup> The entities that Lakritz Adler wrote Graham checks from in this one instance include: Robb Lakitz, Josh Adler, Lakritz Adler Development, Lakritz Adler Construction, Lakritz Adler Investments, 81 Kettering LLC, 1335 Fairmont LLC, 8415 Fenton LLC, 1525 9th Street NW and Lot 24 LLC. Government of the District of Columbia Office of Campaign Finance, Report of Receipts and Expenditures for Candidates/Principal Campaigns or Political Campaigns, Re-Elect Jim Graham 2010, January 31, 2010.



WMATA Board's designation of the Selected Developer and approval of the Term Sheet.<sup>6</sup> The JDS also indicated that proposals were due on October 5, 2007.

29. Banneker and its development team was one (1) of three (3) development teams to timely respond to the JDS to become the selected developer of the Site.

30. Banneker's development team included 1) Banneker (Developer); 2) District Development Group, LLC (Co-Developer); 3) Donatelli Development, Inc. (Co-Developer); 4) Torti Gallas & Partners, Inc. (Project Architect); 5) MacFarlane Partners (Equity Partner); and 6) Tompkins Builders (General Contractor) (collectively, the "Banneker Development Team").

31. On September 18, 2007, Advisory Neighborhood Commission ("ANC") 1B, which governs the area where the Site was located, hosted a community Town Hall meeting to allow the WMATA short-listed development teams to present their vision for redeveloping the Site. Banneker was one of the teams that presented its vision for the Site.

32. On October 4, 2007, ANC 1B wrote a letter to WMATA (copying the two WMATA principal-Directors from the District—Jim Graham and Emeka Moneme) providing its exclusive support of the Banneker Development Team to develop the Site.

33. Between October 2007 and March 2010, Banneker met with several national institutional investors who expressed an interest to Banneker in providing equity and debt for the Jazz project, including MacFarlane Partners, New Boston Fund, JP Morgan Asset Management/JP Morgan Urban Fund, Goldman Sachs, and CalSTRS (the largest educator-only pension fund in the world with \$161 billion under management as of January 2013).

34. Between October 19, 2007 and October 24, 2007, Chris Donatelli ("Donatelli") of Donatelli Development, Inc., a then-member of the Banneker Development Team, contacted

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<sup>6</sup> Section 3.2C of JDS.

Graham about setting up a meeting for the purpose of informing him about its proposed development proposal to WMATA.

**Graham's Bid-Rigging Scheme: The Start**

35. On November 14, 2007, Donatelli emailed the Banneker Development Team and stated that Graham cancelled the scheduled-meeting between him and the Banneker Development Team.

36. Two (2) days later, on November 16, 2007, Derrick Woody, a staff member with the District of Columbia Office of the Deputy Mayor for Planning and Economic Development ("DMPED") "recommended that Metro select LaKritz Adler to develop the Florida Avenue Property".<sup>7</sup>

37. On December 4, 2007, Donatelli emailed Banneker and District Development Group ("DDG") indicating that he would not be able to attend a team meeting.

38. On December 6, 2007, Rosalyn Doggett ("Doggett"), a WMATA employee charged by WMATA to lead the review of the responses to the JDS and lead its negotiations for the Site, invited Banneker to meet with WMATA staff to present its proposal and participate in an Oral Interview to be held on December 17, 2007. Later that day, Karim sent an email to the Banneker Development Team informing them of the Oral Interview with WMATA.

39. On December 13, 2007, Banneker received letters of interest to provide financing for the Project from MacFarlane Partners, a \$1.45 billion investment company, Bank of Georgetown, and the District of Columbia Housing Finance Agency. Banneker provided these letters to WMATA.

40. Upon information and belief, on or about December 14, 2007, Graham told Donatelli that he would not support the Banneker Development Team's proposal. Believing that Graham

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<sup>7</sup> Bondi Report, p. 15, FN 10.

would not oppose the Banneker Development Team if Banneker became a non-majority member thereof, on December 14, 2007, Banneker met with DDG and Donatelli and agreed to become a silent minority partner and not participate in the Oral Interview with WMATA scheduled three (3) days later. Later that evening (at 7:45pm), Banneker sent DDG and Donatelli all of the presentation materials needed for the Oral Interview, including the project schedule, financials, letters of interest from lenders, etc.

41. On December 16, 2007 at 1:22pm, Williams emailed Karim and inquired: “Has Chris [Donatelli] confirmed that us dropping out will get Graham’s support?”<sup>8</sup>

42. Later the same day (3:46pm), Josh Kern (“Kern”) of DDG, emailed Karim, Williams and Donatelli stating that Banneker, DDG and Donatelli “should present to the WMATA staff on Monday . . . and that not presenting seems unprofessional and the worst possible option for us.” Kern then recommended that “as part of the presentation, we respectfully request allowing Banneker to withdraw and to allow Donatelli [to] assume the role of managing member. This approach seems to address everyone’s concerns. We can spend today revising the presentation according to this new strategy.” At the end of his email, Kern states that “[w]e should reach out to . . . Graham to let him know our plans and we should immediately begin revising the presentation.”<sup>9</sup>

43. Later the same day, Kern contacted Karim to inform him that Donatelli was withdrawing from the Project and would not be leading or participating in the next day’s Oral Interview with WMATA. Upon information and belief, Graham convinced Donatelli to wait until the last minute to drop out of the Project so that LaKritz Adler’s bid would be accepted.

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<sup>8</sup> Email from Williams to Karim dated December 16, 2007.

<sup>9</sup> Email from Kern to Karim and Williams dated December 16, 2007.

44. In addition to telling DDG that it was withdrawing from the Project, Larry Clark, Donatelli's Vice President, also contacted Banneker's other development partners, including Norman Glasgow, Jr. ("Glasgow"), of the law firm of Holland & Knight LLP (and one of the top zoning attorneys in Washington, DC) who was supposed to take part in the Oral Interview at Banneker's request, to inform Glasgow that the Banneker Development Team and Donatelli were withdrawing and not to come to the Oral Interview the next day.

45. On the morning of Monday, December 17, 2007, Glasgow called Karim to confirm that Banneker was in fact dropping out of the bid for the Site. Karim told Glasgow that Banneker was still moving forward with the Oral Interview and that he hoped that he could still attend to which Glasgow agreed.

46. Despite Graham's direction to Donatelli to withdraw from the bid and effectively from the Banneker Development Team, Banneker and DDG decided to move forward with participating in the Oral Interview, without the active support, presence or participation of Donatelli.

47. Despite having only a few hours to update its presentation to remove Donatelli and any reference to its participation, Banneker and DDG were able to revise the presentation in time.

48. On the morning of December 17, 2007, Graham contacted Buwa Binitie ("Binitie"), another DMPED staff member, and informed Binitie that "Banneker was not supposed to attend the Oral Interview" and that he should contact Williams to let him know that Banneker should not attend and to withdraw from consideration. Immediately thereafter, Binitie called Williams and informed him to not attend the Oral Interview as Graham had directed. Minutes later, Williams came into the lobby of the WMATA Headquarters and informed the members of the

Banneker Development Team of his phone call with Binitie and appraised the team of Graham's demands.

49. The Banneker Development Team nevertheless decided to proceed with its presentation of its proposal and Oral Interview with WMATA staff and WMATA's real estate consultant.

50. The presentation and Oral Interview were well received. The Banneker Development Team proposed a project that would be known as "The Jazz at Florida Avenue" or "The Jazz" and also proposed a project that would create 103 new residential units and 11,750 square feet of retail space on the Site.

51. The proposal was based on a 60-year ground lease of the Site with a base lease payment of \$500,000.00 per year.

52. On January 28, 2008, Metropolis Development Company, a local development company, provided Banneker with a letter agreeing to serve as a co-developer of the Site.

#### **Banneker's Selection by WMATA**

53. On January 29, 2008, Doggett and her team sent a memorandum to Nathaniel Bottigheimer ("Bottigheimer"), WMATA's then-Assistant General Manager of Planning and Joint Development, recommending that the WMATA Board of Directors select Banneker to develop the Site.<sup>10</sup>

54. On February 15, 2008, Banneker received an exclusive letter from Howard University expressing Howard's interest in partnering with Banneker in the development of the Howard-owned parcel and WMATA-owned parcels. When providing Banneker with the letter, Howard's Associate VP of Real Estate Development told Karim that Adler had informed her that WMATA had already selected LaKritz Adler to develop the Site, when in fact it had not selected LaKritz Adler. The Associate VP did not believe Adler and provided Banneker with the letter.

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<sup>10</sup> Bondi Report, p. 16.

55. In February 2008, Banneker began meeting with development and finance partners in connection with the development of a hotel on the Howard-owned parcel.

56. On February 29, 2008, Doggett notified Karim by phone that WMATA's staff had recommended to the Board that Banneker be designated as the Selected Developer of the Site. She also informed Karim that WMATA and Banneker needed to negotiate an expedited term sheet.

57. Five days later, on March 4, 2008, Doggett sent Banneker a draft term sheet (the "Term Sheet") indicating that Banneker had been selected as the developer of the Site and again advised Banneker over the phone and through emails that the Draft Term Sheet needed to be finalized within two weeks—an incredibly accelerated timeline for this complex, multi-million dollar public-private development.

58. On March 10, 2008, just six days after Doggett sent Karim the Draft Term Sheet, Doggett emailed Karim writing that she needed to know that the Term Sheet is acceptable.

59. Over the next few days, Banneker and WMATA negotiated the Term Sheet that became finalized on March 18, 2008. The Term Sheet indicated a base rent increase to \$597,000.00 per year (\$97,000.00 more than what Banneker proposed in its response to the JDS). Doggett informed Banneker that the increase in the base rent that Banneker would pay WMATA was due to the removal of the 10% of affordable housing units which Banneker included in its 2007 offer.

**Graham's Bid-Rigging Scheme: The Interference Tactics**

60. On or about April 2008, when Graham learned that Metropolis had agreed to be a co-developer with Banneker of the Project, he called Metropolis' principal Merrick Malone and told him not to partner with Banneker.<sup>11</sup>

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<sup>11</sup> Bondi Report, p. 30.

61. On or about April 17, 2008, Doggett called Karim and informed him that Graham had raised concerns about the participation of Williams in the development of the Project. Specifically, Doggett suggested that Banneker state in writing that Williams would not participate in the project if Banneker's proposal was approved by the Board. Incidentally, this is the same date that Graham raised concerns about Williams' involvement in the D.C. lottery contract with Gandhi and initiated his campaign to stop the lottery contract award.

62. By letter dated April 23, 2008, Banneker responded to Graham's concerns. While the letter addressed Graham's substantive concerns, Banneker did not agree to disassociate Williams from the Project.

**Graham's Bid-Rigging Scheme: Delay Tactics**

63. On April 24, 2008, the Agenda of the WMATA Board of Directors Planning, Development and Real Estate Committee (the "PDRE Committee") included the approval of Banneker as the Selected Developer and approval of the negotiated-Term Sheet between Banneker and WMATA.

64. During this meeting, Graham requested that Banneker's designation as the Selected Developer be discussed in an Executive Session of the Board, which meant that the discussion would not be held in public.

65. During the Executive Session, Graham attempted to discredit Banneker by indicating that it did not have the financial capabilities to develop the Site, with the hopes of improving LaKritz Adler's chances of becoming the Selected Developer of the Site. He also requested to review the proposals of all three (3) finalists, which included Banneker, LaKritz Adler and MTC. Graham's comments were specious, malicious and without basis in fact or reality.

66. On the same day, after the public reconvening of the PDRE Committee, Graham moved to defer the WMATA Board approval of Banneker to serve as the developer of the Site and approval of the Term Sheet for a period of not less than sixty (60) days. The Board did so and its actions were unprecedented.

67. What began as an expeditious Project implementation schedule soon slowed when Graham's political calculus and personal animus began to permeate the Project. And in the context of WMATA joint development projects, the Board rarely voted contrary to a Metro joint development staff recommendation.<sup>12</sup> To do so here was an extraordinary event.

68. In response to the deferral of the Term Sheet ratification, Karim contacted several WMATA staff and Board members in an effort to address any issues which may have affected the Board's consideration of the negotiated Term Sheet.

69. On or about May 1, 2008, one week after the PDRE's vote to defer the approval of the Term Sheet, Karim called Graham to request a meeting to discuss the postponement of Banneker's selection as the developer of the Site and to further understand the basis of Graham's concerns.

70. Graham told Karim that he would agree to meet with him only if they met at Ten Penh restaurant, Graham's "favorite restaurant." During the course of the lunch meeting, Karim asked Graham why he moved to defer Banneker's approval as the developer and approval of the Term Sheet by the WMATA Board and what he could do in order to advance the Project. Graham responded by saying that Karim "need[ed] to add LaKritz Adler" to his development team before he could expect approval of the Term Sheet.

71. Immediately following this meeting between Graham and Karim, Karim received a series of unsolicited telephonic and email communications from Adler proposing the "transfer of [their]

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<sup>12</sup> Bottigheimer Interview Memo referenced in Bondi Report, p. 18, FN 33.



ground lease and purchase option of an adjacent site, at 1920 8<sup>th</sup> Street, NW, to [Banneker] for inclusion in [Banneker's] proposed project.” ***In order for Adler to initiate these communications, he had to receive direction from the recipient of his campaign contributions, Graham.***

72. On May 9, 2008, Joel Washington (“Washington”), WMATA’s then-Director of the Office of Station Area Planning and Asset Management, which oversees all WMATA development projects, contacted Karim and informed him that Graham wanted him (Washington) to have Banneker address alleged financial obligations to the District by Banneker’s then principal, Williams. Banneker provided a written letter to Washington confirming that Williams did not have any financial obligations to the District.

73. In an email dated June 17, 2008 (one week before the PDRE Committee was to reconsider Banneker’s selection as the Developer of the Site and approve the Term Sheet which had been negotiated by WMATA’s staff with Banneker almost three months prior), Adler included in a proposal to Banneker, the following language:

Upon Seller’s (LaKritz Adler) nonrefundable receipt of the Assignment Option Fee, Seller would notify WMATA of its intention to withdraw from competition for the adjacent WMATA parcels.

74. Through this proposal to Banneker, Adler attempted to use his influence over Graham to facilitate the forbearance of Banneker’s pursuit of a prospective advantage that Banneker had ostensibly already secured in the form of the exclusive right to negotiate the Term Sheet and Joint Development Agreement for the Site—a right that Banneker had already provided \$100,000.00 and significant tangential expenses to advance.

75. Adler continued to attempt to negotiate the transfer of the 1920 8<sup>th</sup> street parcel through October of 2008.

**Graham's Bid-Rigging Scheme: The Sordid Quid Pro Quo**

76. On May 29, 2008, Graham met with Banneker's then-principal, Williams, and three others associated with Williams' separate bid to run the D.C. Lottery which was pending before the D.C. Council. A few months earlier, the Office of the Chief Financial Officer for the District of Columbia ("OCFO") awarded W2I, a joint venture between W2Tech, a company that involved Williams, and Intralot, an international lottery vendor, a lucrative contract to administer the D.C. lottery. Since the contract was a multi-year contract valued at over \$1,000,000.00, it was subject to the approval of the D.C. Council, of which Graham was and is a member.

77. During the meeting, ***Graham unlawfully offered his official support as a member of the D.C. Council in the ratification of the D.C. Lottery contract in return for Williams' agreement to withdraw Banneker as the Selected Developer of the Florida Avenue WMATA Project.***<sup>13</sup>

78. On June 3, 2008, a Draft Agenda of the PDRE Committee for June 12, 2008 appeared on WMATA's website which showed that the Florida Avenue Developer Selection was on the Committee's agenda.

79. On June 11, 2008, James Link ("Link"), a lobbyist for Williams, sent an email to Graham stating in part:

I know you are out of town, but hopefully you are checking email?  
We looked into the questions you asked. As you know, Warren Williams spoke emphatically that he had absolutely no involvement in paying for, producing or promoting the . . . posters that were painted of you. [Moreover, t]he Williams family confirmed with me again that no family member ever made a contribution to the campaign of Chad Williams, who challenged your seat.

***As for Metro, there are a number of factors that make it impossible for us to even consider accommodating your request.*** [Emphasis added].

I wanted you to also be aware that our communications person, Crystal Wright, received a call from a reporter from the DC Examiner who was asking questions about our meeting and seemed to know a great deal about what was said. Since I

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<sup>13</sup> Bondi Report p. 40.

don't talk to reporters, I would suggest that you contact Crystal directly if you would like to know more about this. ***Please know that no one from our team contacted the media as it would not be in our interest or your interest to publicize what was discussed.*** [Emphasis added].

80. Graham responded to Link on the same day by email which read:

I would rather not continue this on email  
I will check on the examiner. I know I did not speak to them.  
The rejection of your application at Metro (which has not been approved) is necessitated not by any of this but by other factors relating to the application.

**Graham's Bid-Rigging Scheme: Additional Delays**

81. According to a 2012 recently-released report prepared by Cadwalader, Wickersham & Taft LLP (the "Bondi Report"), that was initiated at the request of WMATA after *The Washington Post* and other news outlets began writing about Graham's bid suppression scheme, these "other factors" to which Graham referred to in his email were mentioned ***only after*** it had been communicated to Graham that Williams would not be willing to facilitate Banneker's withdrawal from the WMATA project.

82. The pre-textual nature of these "other factors" is also evidence when one considers that they did not preclude Graham from attempting to use his official influence in the Lottery consideration in affecting Banneker's interest in the WMATA contract."

83. One day after Graham's June 11, 2008 email exchange with Williams' lobbyist, Banneker's designation as the Selected Developer was removed from the Final Agenda of the June 12, 2008 PDRE Committee. As Banneker had not agreed to forgo its designation by WMATA as the Selected Developer, or include LaKritz Adler on its development team, this extension allowed Graham and LaKritz Adler additional time to attempt to create leverage against Banneker's position.

84. On June 17, 2008, Adler contacted Karim and informed him that the “*word he’s getting is that they [WMATA] are waiting until we work out something out before they [WMATA] approve our deal.*” Adler then presented a thirty minute offer to Karim for Banneker to purchase LaKritz Adler’s option to an adjacent parcel. Minutes later, Adler sent Karim a three-page detailed term sheet which expounded further on how Adler wanted Banneker to purchase its option.

85. Leading up to the June 26, 2008 meeting of the PDRE Committee, the WMATA staff again requested that the Board approve the Term Sheet previously agreed to by WMATA and Banneker.

86. On June 24, 2008, two days prior to the June 26, 2008 PDRE Committee meeting, Bottigheimer, in an email exchange with Graham regarding the resolution to approve Banneker’s selection as the Selected Developer, stated:

Thinking out loud about *how to accommodate your request* [Emphasis added], I don't think we could go as far as to specify roles for team members in the resolution language by team member name. Should a team member with required expertise elect to resign its role on the winning team, I imagine we'd want to have the flexibility to substitute a new team member with equal expertise. If I'm thinking correctly, the resolution language should anticipate that possibility. As I understood it this morning, the desired language would emphasize that the firm doing the construction would have to have a well demonstrated capability for a project of this type, and would have to be in control of the construction process. That is the sense that I am -- hopefully correctly -- trying to capture. If incorrect, please do advice.

87. The very same day, Adler emailed Karim stating that “[w]e were expecting some feedback on our proposal last Friday? Have your people reviewed it yet?”

88. On June 26, 2008, the PDRE Committee again met to consider approval of Banneker as the Selected Developer and the Term Sheet. At the beginning of the PDRE meeting, Graham

again moved that the consideration of Banneker and the Term Sheet be done in Executive Session, and thus out of the public's view.

89. After more than an hour of closed door meetings in Executive Session, the Committee reconvened and one of the PDRE Committee members moved to approve Banneker's designation as the Selected Developer and the negotiated Term Sheet. After the motion was seconded, Graham then made a motion which "direct[ed] the staff to negotiate an affordable housing set aside in this proposal" The PDRE Committee voted unanimously in favor of the motion, which materially changed and fundamentally altered the terms of the negotiated Term Sheet, to Banneker's detriment, which seconds earlier, had been approved by the PDRE Committee.

90. All PDRE Committee members, except Graham, voted to approve Banneker's selection and the Term Sheet; Graham abstained.

**Graham's Bid-Rigging Scheme: The Vendetta**

91. Following the PDRE Committee meeting, the full WMATA Board reconvened on the same day to review and vote on matters that had been approved by the various Board Committees. During the full meeting of the Board, Graham stepped down from the dais and sat next to Karim who was sitting on the front row of the Auditorium where the WMATA Board was meeting. At this time, Graham informed Karim that he would vote for Banneker's selection to perform the Project, but that Karim "need[ed] to meet" with him to "discuss the Project".

92. Minutes later, on June 26, 2008, the Board (including Graham) voted to approve the Term Sheet and Banneker as the Selected Developer.

93. On June 26, 2008, in a *Washington Business Journal* story announcing that WMATA had picked Banneker to develop the Site, Graham continued to try to discredit Banneker by stating

that there is a serious question as to whether this deal is financially viable, even going so far as to moving unsuccessfully to require an updated appraisal.

94. When Banneker refused to drop out of the bid for the WMATA Site, Graham went on a vendetta as described by the *Washington Business Journal* on July 14, 2008, just three weeks after the PDRE Committee voted to approve Banneker as the Selected Developer. The article stated that Graham “was so wary of Williams that he tried to derail efforts to award him the Florida Avenue lot.”

#### **The District of Columbia Lottery Contract**

95. On January 24, 2008, the OCFO awarded a joint venture that involved Williams a lucrative contract to administer the D.C. lottery.

96. Beginning in April 2008, Graham publicly led the D.C. Council’s opposition to the proposed lottery contract. Publicly, he repeatedly sought to have the lottery contract re-competed, a favored tactic employed by Graham to exercise undue influence on bid processes in which he was involved. Privately, he told Williams and others that he would vote for Williams’ lottery contract if Williams withdrew Banneker from the Florida Avenue WMATA project.

97. According to the Andary Report, Payne, who was the OCFO’s Director of Contracts and the decision maker on the lucrative lottery contract, was directed to meet with Graham on April 24, 2008. During this meeting, Graham alluded to “a bone” he had to pick with Payne and repeatedly raised concerns about the selection and/or involvement of Williams in the Lottery contract.<sup>14</sup>

98. In the May 29, 2008 meeting at Graham’s office between Graham, Williams and three others associated with the lottery joint venture, Graham unlawfully offered his official support as a member of the D.C. Council in the ratification of the D.C. Lottery contract in return for

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<sup>14</sup> See generally Andary Report.

Williams' agreement to withdraw Banneker as the Selected Developer of the Florida Avenue WMATA Project. In this meeting, Graham: a) expressed concern that members of Banneker's development team had made monetary contributions to Graham's political opponents; b) indicated that Banneker had been winning too many projects; c) stated that he wanted another developer to win the WMATA Project; and d) offered that if Williams agreed to secure the withdrawal and forbearance of Banneker from the WMATA Project, he would support W2I's then-pending bid for the D.C. lottery contract which was awaiting ratification by the D.C. Council.<sup>15</sup>

99. The next day, May 30, 2008, Link, sent an email to Graham thanking him for the May 29<sup>th</sup> meeting which read:

I wanted to let you know that I greatly enjoyed and appreciated meeting you yesterday and for the opportunity you gave the Williams to engage with you in reconciliation.

I found the meeting to be productive and I look forward to discussing next steps. Please feel free to contact me any time...

100. On June 2, 2008, Graham responded:

Thanks. ***Do you think they will do anything?***[Emphasis added].

101. On June 2, 2008, Link responded:

Yes. Wheels are in motion. Everyone took your concerns seriously. I would like to discuss with you and/or Calvin at a time convenient for you. Thanks much.

102. Later on the same day, Williams sent an email to Crystal Wright (W2I's communication's consultant), Link, Alaka Williams and A. Scott Bolden ("Bolden"), an attorney with Reed Smith LLP, stating:

We should discuss with the councilmember, the fact that, even though I don't like it to prove to him that I'm "onboard" and "non-threatening" I would give him the [WMATA] project.

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<sup>15</sup> Bondi Report, p. 40.

The legal realities are that I can't do that. Banneker Ventures own 35% of the rights to develop the sites. Two other companies have much more to lose. If we tried to drop out they would sue us. We've got six figures of expenses as well as a six figure deposit being held by [WMATA].

Is this something Omar and I go in with Jim and Crystal to discuss with the councilmember? Our [WMATA] board meeting where this gets voted on is this [T]hursday.

103. On the same day (June 2, 2008) Link responded by email to Williams stating:

Warren, I think we should be upfront with Graham about why this piece of his request cannot be accommodated. Its pretty clear that you are unable for very strict legal reasons to unilaterally make that decision....

104. On June 2, 2008, voicing his objection and disgust with the propositions advanced by Graham, Bolden responded by email to Williams, Link and Wright stating:

I have made my thoughts on this nonsense very clear to [W]arren. *[T]his is complete bs and we are getting very close to corruption, bid rigging and other inappropriate conduct and I am not going to be a part of it. [P]erhaps the us atty should make the call on this by speaking with Graham about his request.* Am I clear on this. To even consider it is placing each of us at risk. Period. [Emphasis added].

105. In a following email to the same parties five minutes after his previous email, Bolden stated:

[A]ny follow up discussions and meeting with [M]r. Graham, please [be] sure I attend. [T]he political stuff, we can negotiate. The bid withdrawal is off the table.

106. On June 5, 2008, Graham met with Gandhi and raised concerns about the D.C. Lottery contract and Payne.

107. Robert G. Andary, the then-Director of the Office of Integrity and Oversight ("OIO") of the OCFO then initiated a criminal investigation of Payne at the behest of Graham, and Graham sought confidentiality in order to shield his identity as the catalyst of the OIO investigation.



108. On the same date that Graham told Karim to come see him following a vote to approve Banneker's designation as the Selected Developer of the Site—June 26, 2008—Graham met with Andary in order to articulate his lottery concerns.

109. Andary's investigation concluded that "Graham met with W2I representatives and tried to get Williams to withdraw from a WMATA contract in exchange for Graham's support on the Lottery contract" and that Graham told several people in a meeting held on May 29, 2008 that if "Williams would step off the WMATA contract, then Graham would be willing to get on board with the lottery contract."<sup>16</sup> This constituted an illegal quid pro quo act.

110. Upon information and belief, Graham had the OCFO modify and then suppress the damaging Andary Report.

#### **Graham's Bid-Rigging Scheme: The Squeeze**

111. On July 2, 2008 (less than a week after Graham approached Karim in WMATA's Auditorium), Graham and Karim met at Graham's D.C. Council office. Graham indicated that he wanted 20% of the Site's residential units to be set aside as affordable housing. Graham also informed Karim that he wanted him to participate in a U Street Business Improvement District ("BID") program that he was spearheading. In response to Karim's inquiry regarding the monetary commitment for the BID, Graham represented that it would be the cost of "one of those tables at one of those events." Karim believed this to be a reference to the cost associated with a ticket to a building industry association event. Karim told Graham that he would give it some thought but did not commit to the payment. Graham also renewed his request that Karim "find a way to" add LaKritz Adler to the Banneker Development Team. Karim later came to know that the cost of the participation would be between \$30,000 and \$40,000 in yearly dues payment to Graham's BID program.

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<sup>16</sup> See generally Andary Report.

112. In a deposition with the Bondi investigative team, Graham did not deny that this meeting took place and recalled that he “may have suggested that Banneker Ventures add LaKritz Adler to the development team when Banneker Ventures’ former development partner withdrew from the project. ***However, Metropolis informed Bondi that the only reason it withdrew from the project was because Graham told its principals to withdraw and not partner with Banneker—*** splintering the door open for Graham’s campaign donor, LaKritz Adler, to join the team.

113. On July 15, 2008, two weeks after Banneker had been designated the Selected Developer by WMATA’s Board, Adler emailed Karim a revised term sheet reducing the price for the option that LaKritz Adler held in the adjacent site from \$3.5 million to \$2.3 million, a reduction of \$1.2 million from the previous weeks’ offer.

114. On July 16, 2008, Karim traveled to Atlanta, Georgia to participate in a hotel conference and meet with perspective hotel partners about developing a hotel on the Howard-owned parcel.

115. On July 17, 2008, Banneker received a letter from Washington informing Banneker that on June 26, 2008, the WMATA Board selected Banneker as the developer of the Site, approved the term sheet and authorized his office to negotiate a joint development agreement with Banneker. Washington requested that Banneker return the signed Term Sheet to Washington and provide a check for \$100,000.00—in addition to the previous \$100,000.00 that Banneker provided WMATA when it submitted its response to the Joint Development Solicitation.

116. On July 17, 2008, WMATA and Banneker signed the term sheet giving Banneker the exclusive right to negotiate a Definitive Agreement with WMATA.

117. On July 22, 2008, Banneker held a call with JP Morgan to discuss JP Morgan providing Banneker with debt and equity financing for the Jazz Project. Later that day, Banneker met with

several debt and equity partners (including Wells Fargo and Enterprise), a major retail tenant and Marriott about partnering with it to develop the Howard-owned parcel into a hotel.

118. On July 25, 2008, Banneker met with WMATA about the Project. During the meeting, Doggett informed Banneker that WMATA intended to send Banneker a draft of the Joint Development Agreement and Lease by August 2, 2008, that WMATA expected to finalize the JDA and Lease between WMATA and Banneker by October 2008 in time for the Board to approve the JDA and Lease at its December 2008 Board meeting. Doggett also informed Banneker that it should speak with Graham regarding Graham's adding an affordable housing component to the Project. During the same meeting, Banneker paid the \$100,000 Option Fee required by the JDS and thus, gained the exclusive right to negotiate with WMATA for development of the Site.

119. In August 2008, Banneker and LaKritz Adler continued to negotiate the sale of LaKritz Adler's option to purchase the Adjacent Site.

120. On August 27, 2008, Banneker met with Goldman Sachs to discuss Goldman providing Banneker with equity financing for the Jazz Project and on August 29, 2008, Banneker met with CapMark, a large debt provider, to discuss CapMark providing debt financing to Banneker for the Jazz Project.

121. On September 19, 2008, Kern sent Karim an email about an article that appeared in the *Washington Business Journal* indicating that a U Street Improvement District was being planned. Karim's email responding to Kern stated that Graham mentioned the BID when Karim and Graham met a few weeks prior and that Graham tried to get Karim to join the BID and after Karim inquired about the cost to join, Graham told him that "it would cost about the price of a table at one of these events". Karim told Graham that he could not commit although Karim

initially thought that it would only be \$1,000. Karim later learned that the cost for Banneker to join the BID would be \$40,000 per year. ***Given the pending nature of the joint development agreement approval by the PDRE Committee and Board, Graham's request that Karim participate in his BID program was a clear attempt at extortion.***

122. In the summer of 2008, Banneker was tentatively awarded between \$12 million and \$16 million in Tax Increment Financing ("TIF") from the District of Columbia in connection with the Jazz Project, pending final negotiations with the District and approval of the JDA with WMATA.

123. Between September and October 2008, Banneker provided WMATA with an analysis of the impact that the WMATA-Board ordered inclusion of affordable housing would have on the Project.

124. On October 7, 2008, WMATA provided Banneker with a draft of the JDA and Lease for the Site.

125. By the end of October 2008, when it became clear that the cost to purchase the underlying land of the 8<sup>th</sup> Street parcel, that LaKritz Adler had an option to purchase, was exorbitantly high, Banneker chose not to move forward with the purchase of the option and ended negotiations with LaKritz Adler.

126. Between October 2008 and December 2008, Banneker and WMATA negotiated the terms of the JDA and Lease coming to an agreement on most of the terms of these agreements. This posture threatened to frustrate Graham's intention to derail the ratification of an agreement between WMATA and the Banneker Development Team.

127. Upon information and belief, ***when Graham became aware that Banneker did not want to purchase LaKritz Adler's option on the adjacent parcel, Graham directed WMATA's staff to stop negotiations of the JDA and Lease.*** He further directed them to go back to negotiate a

revised Term Sheet and represented that only after a revised Term Sheet was approved by the Board would the Board consider approving the JDA and Lease.

128. In November 2008, Banneker met with Goldman Sachs where Goldman informed Banneker that it was interested in providing equity to Banneker for the Jazz Project.

129. On December 2, 2008, Stone & Youngburg, Banneker's equity partner in connection with the TIF, and a national leader in tax increment financing, provided the District with a letter expressing its interest in providing financing to Banneker for the Jazz Project.

130. On December 10, 2008, Banneker met with Banc of America Community Development Company ("BoA"), the nation's most productive Bank-owned community development corporation, where BoA expressed a strong interest in becoming Banneker's development partner on the Project. Between January and March 2009, Banneker and BoA met several times to discuss details of the Project resulting in BoA providing Banneker with confirmation letter of interest to become co-developer of the Jazz Project on March 6, 2009.

**Graham's Bid-Rigging Scheme: Graham's Chairman Year**

131. On or about January 29, 2009, Graham became Chairman of WMATA's Board of Directors. One of his very first acts as Chairman, was to meet with WMATA's staff to push for LaKritz Adler being included in the Project, a blatant abuse and misuse of this position of public trust.

132. On January 29, 2009, "almost a full year after Metro selected Banneker Ventures, . . . Graham expressed his support for LaKritz Adler to be involved in the Florida Avenue Project to Ms. Doggett . . . at a meeting regarding the Florida Avenue Project."<sup>17</sup>

133. Five "days later, on February 3, 2009 . . . Adler, called [Doggett] to say that . . . Graham had asked him to "make a deal" with Banneker Ventures."<sup>18</sup>

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<sup>17</sup> Bondi Report, p. 58.

134. During the period that Banneker was in negotiations with WMATA for the Site, Graham provided confidential Board information to LaKritz Adler about Banneker's proposal in order to provide LaKritz Adler with a competitive advantage.

135. In her interview with the Bondi investigative team, Doggett explained that during a February 3, 2009 call with Adler, "Adler spoke with specificity about Banneker's . . . proposal, and that she did not know how he obtained the information."<sup>19</sup>

136. Between January 2009 and March 2009, Banneker informed WMATA that Metropolis' principal had learned that he had cancer, that Banneker did not think that Metropolis would be able to continue working on the Project and that it was replacing Metropolis with BoA. On March 6, 2009, Banneker provided WMATA with a copy of the letter of interest from BoA to serve as the co-developer of the Project. On March 11, 2009, Banneker provided additional information to WMATA on BoA, including an overview of local projects that BoA had or were currently developing; a biography of BoA's Senior Development Manager, who was the point person for the Jazz project, and information on Banneker's construction management experience.

137. On April 23, 2009, even though Banneker and WMATA had negotiated a final deal for the Site, and WMATA's staff recommended to the Board that it approval the deal, Graham delayed approval of the deal, pushing approval back at least 120 days, and directed WMATA's staff to obtain a new appraisal for the Site.

138. On May 29, 2009, Doggett sent Banneker and BoA an email stating that "while there was agreement that we have a possible framework for a deal, WMATA wanted to get an outside appraisal from an independent contractor, which would take "60 days at best."

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<sup>18</sup> Bondi Report, p. 58.

<sup>19</sup> Bondi Report, p. 58.

139. On August 7, 2009, Banneker received a letter from the District of Columbia Department of Housing and Community Development (“DHCD”) informing Banneker that it had been selected to receive Low Income Housing Tax Credits to finance the Project. The amount of equity that Banneker was going to be able to generate from the DHCD-awarded tax credits was between \$5 million and \$9 million.

140. On August 19, 2009, Banneker received a letter from United Bank confirming the bank’s “interest in providing funding for the TIF note that may be issued to [Banneker] for [the Jazz Project].”

141. On September 10, 2009, despite WMATA staff and Banneker being in agreement to the terms of a deal, Graham again led the Board’s delay of this deal, while couching it in language which “granted the parties an additional 120 days to negotiate the terms of a final agreement.”

142. After orchestrating this delay, on September 10, 2009, Graham is quoted in the *Washington Business Journal* as stating: “I know that the developer [Banneker] is dealing with a recovering real estate market, but we either have to move forward now, or take another look at who will do this job.” By the time of Graham’s statement, Banneker had lined up significant private and public financing to develop the project. In fact, in the same *Washington Business Journal* story, the article indicated that Banneker had been selected to receive tax credits by DHCD for the Project.

143. On September 17, 2009, Banneker and WMATA met to discuss the Jazz Project. During the meeting, Bottinheighmer “offered to sell [the] property to [Banneker]”.<sup>20</sup>

144. Between September 17, 2009 and October 16, 2009, WMATA and Banneker negotiated terms that included Banneker purchasing the Site from WMATA versus leasing it which it had previously negotiated with WMATA.

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<sup>20</sup> Omar Karim’s written notes from meeting.

145. On October 16, 2009, Banneker emailed WMATA attaching the revised Term Sheet which now included a purchase of the Site, indicating that “we believe this concludes our negotiations of the Term Sheet and we are prepared to sign the Term Sheet upon the Board’s Approval.” Banneker asked that WMATA confirm that the “Term Sheet will be submitted for Board consideration at the October 22<sup>nd</sup> meeting”.

146. On October 20, 2009 at 8:18pm, Banneker emailed WMATA indicating that it was fine with all of the changes proposed a few hours earlier (6:05pm) by WAMTA except for the change in time to review the designs. Banneker stated that “any additional extensions would delay our construction start and completion date, which would cause us to loose our tax credits.” Banneker further stated that “as discussed previously, we have to complete 10% of construction by October 2010 and 100% of construction by December 31, 2011.”

147. On October 22, 2009, Karim, Graham, Graham’s then-Chief of Staff, and Banneker’s then-Chief Financial Officer (“Banneker’s CFO”), met for lunch at Busboys and Poets restaurant at 14<sup>th</sup> and V Street, NW, Washington, DC to discuss Graham’s continued opposition to WMATA finalizing the Joint Development Agreement with Banneker. At the outset of the meeting, Graham told Karim and Banneker’s CFO that “*Banneker should not have bid on the WMATA project*” and that he “*will not allow the sale of the Florida Avenue site.*”

148. Attempting once again to insert his campaign contributor LaKritz Adler into the Project, Graham told Karim and Banneker’s CFO that he recommended that Banneker select another partner to work with Banneker on the Project versus BoA, whom Banneker was then working with. During the meeting, Graham promised that if Banneker agreed to change the terms of the Project from a sell back to a lease agreement, he would hold a special committee of the Board within two weeks and that they could finalize terms of the JDA in a month. Karim told Graham



that it had expended a great deal of money to change from a lease to a sale and that going back to a lease would cause it to expend a lot more money. Graham told Karim that WMATA would reduce the security deposit required of Banneker to cover the monies that it expended going back to a lease. Graham then gave Karim the cell phone number of John Catoe ("Catoe"), WMATA's then-General Manager, and told him to call Catoe to inform him of the terms that he and Karim had worked out.

149. Within 5 minutes of the meeting, Karim called Catoe and informed him of what had been worked out. About an hour after this call, Steve Goldin, WMATA's new Director of Station Area Planning and Asset Management (who replaced Joel Washington), sent an email to Graham, Catoe, Karim and several others indicating that "as per direction from our Board, we are preparing a term sheet for the lease of our property" and that "the matter is to be taken up by the full Board in a special meeting in two weeks." Goldin then asked Graham's staff to "confirm that Chairman Graham is in agreement".

150. Twelve minutes later, at 3:20pm, on October 22, 2009, Goldin sent another email stating that "additionally, as per Board direction, there will be a \$100,000.00 reduction in the amount of the security deposit required."

151. On November 4, 2009, a staffer supporting Neil Albert, who replaced Omeka Moneme as the other principal-Director of WMATA, emailed Bottigheimer and staff from WMATA's Office of General Counsel asking them to "confirm whether both parties (Banneker and WMATA) are in agreement and that WMATA staff is prepared to recommend approval of the term sheet during the committee meeting and special board meeting tomorrow."

152. On November 4, 2009, WMATA staff and Banneker agreed to final terms of a development agreement for the Site. That agreement was subject to final approval by the Board.

153. On November 10, 2009, Banneker received an engagement letter from Love Funding setting forth their understanding and agreement concerning the preparation and filing of an application to obtain a \$26,648,000 loan for the Jazz Project.

154. On November 16, 2009, Doggett emailed Banneker to inform it that “once again the term sheet was sent out to the Board on Friday for its consideration on Thursday, November 19.” This same day, she submitted a revised Term Sheet to the Board for approval.

155. On or about November 17, 2009, Banneker and WMATA held a call to discuss the Project. During the call, Goldin informed Banneker that he had been instructed by the PDRE Committee to among other things, obtain Best and Final Offers from Banneker and the two other firms who WMATA considered before selecting Banneker, including Graham’s major campaign donor, LaKritz-Adler.

156. On November 19, 2009, Goldin emailed Banneker informing it that “[t]he Board took no action today after discussing the matter. Following the meeting, staff has been directed to submit a memo to the Board on Wednesday, 11/25/09, addressing issues dealing with increasing the initial capitalized lease payment and lack of payment reset.”

157. Between November 19, 2009 and November 25, 2009, Banneker and WMATA negotiated an increase in the capitalized lease amount whereby Banneker would pay WMATA an additional \$750,000 in an upfront payment.

158. On November 25, 2009, Bottigheimer sent the Board a memo addressing the issues raised at the November 19, 2009 meeting and indicated that Banneker had agreed to increase the capitalized lease payment by \$750,000. At the conclusion of the memo Bottigheimer stated that *“Based on the improved offer presented to Metro by the developer, I recommend this item be*

*returned to the Planning, Development and Real Estate Committee for consideration at the earliest possible date.*” [Emphasis added].

159. Even though every level of WMATA’s staff continued to recommend that the Board move forward with the approval of a Joint Development Agreement with Banneker, Graham, with the acquiescence of the members of the PDRE Committee and full WMATA Board, continued to unlawfully stall Banneker’s project with the intent of running out the clock on its negotiations with WMATA.

160. Upon information and belief, at the direction of Graham, on November 30, 2009, Carol O’Keefe (“O’Keefe”), WMATA’s General Counsel, provided WMATA’s General Manager and the Board with a *Confidential Memorandum* the subject of which is “Can Metro Request a Best and Final Offer from Other Proposers on the Florida Avenue Project?” O’Keefe’s conclusion was “that option is not available until the current negotiation period has expired.”

161. In January 2010, WMATA’s staff again recommended that the Board approve the terms of the agreement between WMATA and Banneker.

162. In January 2010, days before the PDRE Committee meeting in which the agreement between Banneker and WMATA was to be considered and the last month in which Graham would serve as WMATA’s Chairman, LaKritz, Adler and Graham upped the ante when LaKritz Adler’s two principals and 8 other entities that they control wrote checks of the maximum legal amount to Graham’s D.C. Council race.

163. Not once during the years that Graham attempted to steer the Project to LaKritz Adler did he disclose to WMATA that LaKritz Adler was a major financial donor to him and his D.C. Council campaigns, constituent services fund or other Graham controlled entities.

164. On January 14, 2010, the PDRE Committee informed the WMATA staff that it wanted Banneker to pay additional funds to develop the Site and provided a time extension to complete negotiations to March 31, 2010.

165. From January 14, 2010, through March 25, 2010, WMATA staff and Banneker engaged in negotiations to reach a final agreement with regard to the amended Term Sheet for the Project, which included an upfront Capitalized Lease Payment from Banneker to WMATA in compliance with the PDRE Committee's direction.

166. In March 2010, all material terms of the Revised Term Sheet, including price, were agreed to by Banneker and WMATA staff at which time the WMATA staff, for the final time, recommended that the WMATA Board approve the agreement between WMATA and Banneker.

167. According to Bottigheimer during an interview with the Bondi investigative team, "the Metro Board rarely voted contrary to a Metro joint development staff recommendation."<sup>21</sup> Despite this fact, the PDRE Committee and Board, on nearly a half-dozen occasions between 2008 and 2010, led by Graham, continued to vote to delay the approval of either the JDA and Lease or Revised Term Sheet.

168. On March 18, 2010, "Graham instructed the Secretary for the Metro Board to remove the Florida Avenue Project from the March 25, 2010 PDRE" Committee agenda."<sup>22</sup>

169. On the March 25, 2010, 1pm Working Agenda 7 of the Board, under "Report by Joint Development and Real Estate Committee", Item C listed "Florida Avenue Term Sheet and Time Extension to Negotiate a Joint Development agreement (pending Executive Session).

170. On Working Agenda 7 later that day, Item C was removed.

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<sup>21</sup> Bondi Report, p. 18, FN33, Bottigheimer Interview Memo.

<sup>22</sup> Bondi Report, p. 13.

171. On the March 25, 2010 Agenda of the Executive Session of the Board, under Legal Matters, it lists “Discussion of Florida Avenue Joint Development Proposal”.

172. When Karim learned that the Term Sheet had been removed from the Committee’s agenda, he contacted O’Keefe and Albert about what had taken place.

173. Sometime thereafter, the consideration was put back on the Board’s agenda, but under “Legal Matters” of the Board as opposed to on the Committee’s agenda.

174. During the March 25, 2010 Executive Session of the Board, attended by WMATA Principal Directors Jim Graham, Peter Benjamin, Mortimer L. Downey, Catherine Hudgins, Neil O. Albert, Elizabeth Hewlett and Christopher Zimmerman, WMATA Alternate Directors Michael Brown, William D. Euille, Tony Giancola, Gordon Linton, Jeffrey McKay and Marcell Solomon, WMATA General Counsel Carol O’Keefe, WMATA Secretary of the Board Loyda Sequeira-Castillo, and others, WMATA’s Board members unlawfully and indefinitely tabled approval of the executed amended Term Sheet and negotiated JDA and Lease for the purpose of allowing Banneker’s exclusive right to “time out” as suggested in the aforementioned O’Keefe Confidential Memorandum to the Board; and did so knowing that it was Graham’s desire to have the project re-bid to allow his favored developer, Lakritz Adler, a second opportunity at selection.

175. Upon information and belief, following this March 25, 2010 Board meeting, LaKritz Adler submitted and unsolicited proposal to WMATA to purchase or lease the Site.

176. On April 26, 2010, Goldin sent Banneker a letter informing it that Banneker’s exclusive negotiation period for the Project expired on March 31, 2010 and that “Metro has no plans to revisit this matter either at the staff or Board level.”

177. On April 27, 2010, Banneker's then-counsel at Reed Smith LLP sent a letter to WMATA responding to the April 26<sup>th</sup> letter indicating, among other things, that WMATA's actions were unlawful.

178. Although O'Keefe responded to the Reed Smith letter on May 28, 2010, she "did not interview witnesses, did not collect and review documents from the parties involved, and did not examine allegations of Board Member misconduct when formulating her response."<sup>23</sup> Instead, her letter simply attempted to defend WMATA's actions by stating that she regrets that "the faltering real estate market made it difficult for your client to adhere to the original terms which prompted the Board's initial selection of Banneker as the developer of the Site" even though Graham's amendment at the June 26, 2008 PDRE Committee Meeting changed the terms of the Term Sheet when he required, among other things, that the Project include an affordable housing component.

179. O'Keefe further attempted to defend WMATA by arguing that the changing composition of Banneker's development team was one of WMATA's reasons for tabling Banneker's negotiations. However, this falls flat in the face of recently uncovered facts that Graham told two of Banneker's former development partners (Donatelli and Metropolis) to withdraw from the project, and by preventing the sale of the Site, Graham forced BoA from participating in the project as well. Nor does O'Keefe's position account for the myriad of Graham directed changes or modifications to the Project, which materially impacted the Project and significantly impacted the financial terms and composition of the Banneker Development Team.

180. O'Keefe's position that it is WMATA's long standing institutional preference for a lease is inconsistent with the fact that immediately after tabling the negotiation with Banneker,

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<sup>23</sup> Bondi Report, p. 7, FN 1. Memorandum from Cadwalader, Wickersham & Taft LLP to Investigation File, Re: Carol O'Keefe Interview Memorandum (June 21, 2012).

WMATA issued a solicitation for the sale of the Site versus a lease of the Site, and on July 21, 2011, did in fact sale the Site to another developer, JBG Associates.

**Cadwalader Investigation of WMATA, its Board and its former Chairman Jim Graham**

181. On February 7, 2012, WMATA's Board announced that it would launch an independent review into WMATA's, the Board's and Graham's actions involving the Site. In May 2012, the Audits and Investigations Committee of WMATA's Board hired Cadwalader to perform the investigation.

182. The investigation was led by Bradley J. Bondi. Bondi issued a report of his findings on October 11, 2012 (the "Bondi Report"). The "allegations about Graham center on whether he improperly tried to get [Banneker], which had won an open competition, to withdraw from the Metro deal by offering to support the separate bid of a Banneker principal for the D.C. government's lucrative lottery contract."<sup>24</sup>

183. During its five-month investigation, "Bondi questioned thirteen current and former Metro Board Members, six current and former Metro employees and fourteen other involved persons, in some instances under oath and using a court reporter."

184. The Bondi Report, at a cost to WMATA of more than \$800,000.00, included more than 18,000 pages of sworn testimony and documents.<sup>25</sup>

185. In announcing the Report's findings, Alvin J. Nichols, Chair of the Special Working Group of the Audits and Investigations Committee of WMATA's Board stated that ***"[u]nblinkingly, it reveals wrongdoing on the part of a former Board member."*** [Emphasis added].

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<sup>24</sup> Washington Post editorial.

<sup>25</sup> Memorandum Opinion of the Board of Ethics and Government Accountability, In Re: Jim Graham, Case No. AI-002-12, p. 2 (the "Ethics Report").

186. LaKritz Adler refused to cooperate with the Cadwalader investigation and only “partially cooperated with the investigation . . . after months of negotiations.”<sup>26</sup>

187. A “subpoena was issued to LaKritz Adler on June 29, 2012, calling for it to produce documents required for the investigation. After initially refusing to produce documents and questioning Bondi’s legal authority, LaKritz Adler produced a small number of documents on July 25, 2012, and later produced more documents on September 7, 2012 and September 12, 2012 after extensive and time-consuming negotiations.”<sup>27</sup>

188. LaKritz Adler’s counsel “was unwilling to make Adler available for testimony under oath, but did allow him to be interviewed.”<sup>28</sup>

189. Graham refused to answer questions from the Bondi investigative team asserting legislative immunity, although his actions fell well outside the scope of his official legislative duties.<sup>29</sup>

190. The Bondi Report found among other things that Graham:

- “[A]ppear[ed] to barter a Metro joint development project with a matter before the D.C. Council.”
- “[C]ircumvented the Metro Board by attempting to single-handedly persuade [Banneker] to withdraw from the Florida Avenue Project by using the lucrative D.C. lottery contract as leverage.”<sup>30</sup>
- “[S]uggested . . . that [Graham] would consider supporting W2I’s bid for the lottery before the D.C. Council only if Banneker Ventures withdrew from the Florida Avenue Project.”
- “[U]ndermined the integrity of [WMATA’s] joint development process.”
- “[D]isregarded his duty to Metro when he explicitly conditioned his consideration of his support for W2I’s lottery bid on Banneker Ventures’s

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<sup>26</sup> Bondi Report page 8, FN 2.

<sup>27</sup> Bondi Report, p. 8, FN 2.

<sup>28</sup> Bondi Report, p. 8, FN 2.

<sup>29</sup> Bondi Report, p. 17, FN 25.

<sup>30</sup> Bondi Report, p. 6.



withdrawal from the Florida Avenue Project during the May 29, 2008 meeting between . . . Graham, Mr. and Mrs. Williams and two lobbyists for W2I.”<sup>31</sup>

- “[T]he weight of the evidence supports that . . . Graham bartered the Florida Avenue project in exchange for his support of the D.C. lottery contract.”<sup>32</sup>
- “Instead of working to bring the Florida Avenue Project to fruition, . . . Graham attempted to undermine the selected developer, Banneker Ventures, and tried to promote LaKritz Adler or to orchestrate the composition of the development team in favor of LaKritz Adler.”
- “Graham’s actions created an appearance that he was not impartial and thereby were contrary to Metro’s Standards of Conduct.”

191. In Bondi’s interview with Doggett, Doggett stated that “Mr. Malone [of Metropolis] informed her that his firm withdrew because it did not want to anger Councilmember Graham by working on the Florida Avenue Project with Banneker Ventures.”<sup>33</sup>

#### **Findings of District of Columbia Board of Ethics and Government Accountability**

192. In October 2012, the District of Columbia Board of Ethics and Government Accountability (the “Government Accountability Board”) initiated a preliminary investigation of possible violations of the District of Columbia Code of Conduct by Graham.

193. The Government Accountability Board initiated the preliminary investigation *sua sponte* following the public release of the Bondi Report.

194. On February 7, 2013, the Government Accountability Board issued an Order regarding its investigation (the “Ethics Report”).

195. Among other things, the Ethics Report found:

- “[That] Councilmember Graham’s actions created an appearance that he was not impartial and thereby were contrary to Metro’s Standards of Conduct.”
- “[T]here to be sufficient evidence to conclude that Councilmember Graham committed one or more violations of the District of Columbia Code of

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<sup>31</sup> Bondi Report, p. 55.

<sup>32</sup> Bondi Report, p. 55.

<sup>33</sup> Bondi Report, p. 27.

Conduct, justifying a formal investigation and the issuance of Notice of Violation.”<sup>34</sup>

- “At different points in [Graham’s deposition in front of the Cadwalader investigative team], Graham, through counsel, asserted legislative immunity regarding decision-making about the lottery contract. Accordingly, Councilmember Graham refused to answer questions about the lottery contract.”<sup>35</sup>
- Graham “did not explicitly deny offering a quid pro quo to Williams regarding Banneker dropping out of the WMATA project in exchange for Graham’s vote for the D.C. lottery contract.”<sup>36</sup>
- “Councilmember Graham was trying to avoid an explicit discussion of the quid pro quo conversation that had occurred on May 29, 2008” in a series of emails that followed days later between lobbyists for Williams and Graham.<sup>37</sup>
- That “evidence further reflects a likely motive for Councilmember Graham to seek the withdrawal of Banneker Ventures; he wanted the project to go to another development company, LaKritz Adler.”<sup>38</sup>
- That “Councilmember Graham suggested that Banneker Ventures partner with LaKritz Adler or purchase the interest LaKritz Adler held in the adjacent property, *a move that would serve the financial interest of LaKritz Adler.*”<sup>39</sup> [Emphasis added].
- “[T]here is significant evidence that Councilmember Graham had a strong preference for LaKritz Adler and exerted pressure on the principals of Banneker Ventures to abandon its bid or partner with LaKritz Adler. Each of these outcomes could provide a financial benefit to LaKritz Adler, a Graham campaign contributor.”<sup>40</sup>
- “By pressuring Banneker to partner with LaKritz Adler during the period of exclusive discussions between WMATA and Banneker, Councilmember Graham was offering a lifeline to LaKritz Adler *which otherwise would see its financial stake in its property diminished.*”<sup>41</sup> [Emphasis added].

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<sup>34</sup> Ethics Report, p. 4.

<sup>35</sup> Ethics Report, p. 6, FN 13 (citing Graham Deposition 63:5-8).

<sup>36</sup> Ethics Report, p. 9 (citing Graham Deposition 64:1-8).

<sup>37</sup> Ethics Report, p. 12.

<sup>38</sup> Ethics Report, p. 13.

<sup>39</sup> Ethics Report, p. 15.

<sup>40</sup> Ethics Report, p. 16.

<sup>41</sup> Ethics Report, p. 16, FN18.

- Graham “lost the complete independence and impartiality expected in the decision-making process.”<sup>42</sup>
- There is “overwhelming evidence before the Board that Councilmember Graham had a clear inappropriate preference for LaKritz Adler in the WMATA development deal. In addition to his communications with WMATA staff, he used his legislative office to exert pressure on the principals of Banneker Ventures to withdraw from the project (paving the path for LaKritz Adler) and include LaKritz Adler as a development partner.”<sup>43</sup>
- The “fact that LaKritz was a *campaign contributor was a significant factor in Councilmember Graham’s efforts.*”<sup>44</sup> [Emphasis added].
- That “offering to support Williams on the lottery contract as a quid pro quo for withdrawing from the WMATA project is evidence of [Graham’s] efforts to benefit LaKritz Adler. In doing so, Councilmember *Graham went well beyond the contract approval process and sought to steer a benefit to LaKritz Adler, a campaign contributor.*”<sup>45</sup> [Emphasis added].
- Graham’s “actions adversely affected the confidence of the public in the integrity of the legislative process.”
- There is “a substantial body of evidence that Councilmember Graham violated at least three provisions of the District of Columbia Code of Conduct.”<sup>46</sup>
- Graham argued that the statute of limitations had run on much of his problematic behavior.<sup>47</sup>

196. Finally, the Ethics Report found that “[t]he weight of the evidence supports a finding by *substantial evidence* [emphasis added] that Councilmember Graham did, in fact, offer to support Williams and W2I if he and Banneker Ventures withdrew from the WMATA development project:

Mr. and Ms. Williams, Mr. Link and Ms. Wright all understood that a quid pro quo offer had been made (Link Depo. 35:21-22; 36:1-13);

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<sup>42</sup> Ethics Report, p. 17.

<sup>43</sup> Ethics Report, p. 19.

<sup>44</sup> Ethics Report, p. 19.

<sup>45</sup> Ethics Report, p. 19.

<sup>46</sup> Ethics Report, p. 26.

<sup>47</sup> Ethics Report, p. 22 (citing Graham Letter, p. 15).

That offer was discussed among the non-government participants immediately following the meeting (Link Dep. 35:21-22; 36:1-13);

Mr. Williams consulted with counsel because he was troubled by the Councilmember's request; counsel was similarly troubled; and

In an email exchange between Councilmember Graham and Mr. Link who had lobbying responsibility only for the lottery contract, there is an explicit discussion of Councilmember Graham's "request" and the rejection of the Metro deal.<sup>48</sup>

### **Graham's Reprimand by D.C. Council**

197. On February 25, 2012, the Council of the District of Columbia, for only the second time in its 38-year history under Home Rule, adopted a resolution reprimanding one of its members, Graham.

198. In a Press Release issued by the Council's Chairman, Phil Mendelson, Mendelson stated that Graham's actions constitute a clear violation of Council Rules and that the "Council finds, from two years of controversy, the three investigations, and widespread public comments, that Councilmember Graham's actions have adversely affected the confidence of the public in the integrity of the District government."<sup>49</sup>

199. During the February 25<sup>th</sup> meeting to reprimand Graham, Council members voted to publicly reprimand Graham and punish him by stripping him of his power to oversee District liquor licenses and alcohol issues as head of the Human Services Committee.

200. The Council agreed with the Bondi investigation, Ethics Board and OIO Investigation, all which found that "Graham offered to support Banneker Ventures bid on a 2008 lottery contract in exchange for the company withdrawing its bid on a WMATA contract."<sup>50</sup>

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<sup>48</sup> Ethics Report, p. 13.

<sup>49</sup> Press release from D.C. Council Chairman Phil Mendelson dated February 21, 2013 entitled Council to Discipline Councilmember Jim Graham.

<sup>50</sup> Baxter, Jim, *The Washington Examiner*, D.C. Council reprimands Jim Graham, removes oversight of alcohol regulation, Feb. 25, 2013.

201. The conduct amounted to a *quid pro quo* offer.<sup>51</sup> Chairman Mendelson described Graham's conduct as "behind closed doors bartering a vote on one contract with the vote on another contract. This was a barter not between councilmembers but between potential contractors." He further stated that "[p]rocurement is an area in which there is a long history in the United States and in many jurisdictions, federal, state and local, of corruption," and [a]s a result, we have procurement rules that require that the process is shielded from political influence [and] from undue influence from behind closed doors."<sup>52</sup>

202. Finally, Mendelson stated that: "[t]he law, which the Council adopted 35 years ago, makes it clear that elected officials are required to hold themselves in such a manner as to not adversely affect the public's confidence in the integrity of the government."

## **V. CAUSES OF ACTION**

### **COUNT I – BREACH OF CONTRACT (WMATA)**

203. Banneker re-alleges and incorporates ¶¶ 1-202, inclusive, as if set forth fully herein.

204. Banneker entered into an agreement with WMATA, whereby WMATA agreed, among other things, that Banneker would be the Selected Developer for the Site, that Banneker would have the right to enter into a Joint Development Agreement with WMATA to develop the Site, and that Banneker would have the right to lease or purchase the Site from WMATA.

205. WMATA agreed that the Board would only decline to approve development of the Site under certain conditions.

206. None of those conditions were present in this case, and further, the Board stated no rationale for its tabling of negotiations with Banneker.

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<sup>51</sup> Id.

<sup>52</sup> Id. (quoting Mendelson at February 25, 2013 meeting of the D.C. Council held to vote on a reprimand of Graham).

207. Banneker agreed to be the Selected Developer of the Site and did expend enormous financial and personal efforts to both become the developer and to negotiate with WMATA.

208. Banneker performed its obligations, at considerable expense, in accordance with the terms of the parties' agreements, expectancies and understanding, and WMATA's express instructions. Specifically, Banneker paid WMATA two deposits totaling \$200,000.00 and engaged and incurred extensive expenses for various architectural firms, engineering firms, surveyors, land use attorneys, contract attorneys, investors, development partners and others to work on the Project in efforts to satisfy WMATA.

209. Banneker is entitled to the benefit of its bargain, which includes the right to obtain legal title to the Site and/or to obtain the options and other rights as alleged in the alternative in this lawsuit.

210. WMATA and the Board's refusal to negotiate the JDA without reason and lease or sale the Site to Banneker is a material breach of the agreement between the parties, and Banneker has been damaged thereby.

211. As a direct and proximate cause of WMATA's breach, Banneker has not been able to finalize the JDA to develop the Site and has thereby been prevented from developing the Site.

212. WMATA has failed and refused, without justification and despite demand therefore, to perform as it is obligated.

213. WMATA's actions were calculated and not inadvertent, flagrant, with indifference to the consequences to Banneker, committed as part of a proprietary function and in disregard of obligations of trust.

214. Under this circumstances, WMATA is barred by estoppel, waiver or otherwise from disclaiming the existence of Banneker's rights and interests as alleged in this lawsuit.

215. To the extent that this Court does not find an express agreement as claimed by Banneker, as an alternative ground for relief, this Court should find the existence of an enforceable preliminary agreement, implied agreement, oral contract or other enforceable obligation on the part of WMATA to Banneker with respect to the disposition of the Site.

WHEREFORE, Banneker respectfully request this Court enter judgment in Banneker's favor and against WMATA and to:

- a) Award compensatory damages to Banneker, in an amount to be proven at trial, but believed to be in excess of \$100,000,000.00;
- b) Determine the extent to which WMATA's material breach of contract relieves Banneker from performance of other obligations for WMATA; and
- c) Award further relief as justice may require.

**COUNT II – BREACH OF IMPLIED COVENANT OF GOOD FAITH AND  
FAIR DEALING  
(WMATA)**

216. Banneker re-alleges and incorporates ¶¶ 1-215, inclusive, as if set forth fully herein.

217. Banneker agreed to become the Selected Developer of the Site by providing WMATA with \$200,000.00 and executing a Term Sheet with WMATA.

218. Banneker then negotiated a joint development agreement, and other associated documents, with WMATA with the ultimate intention of developing the Site.

219. In every contract, there is an implied covenant of good faith and fair dealing that prohibits a party to a contract or agreement from taking any action that deprives the other party of its benefits and rights under the contract or prevents the other party's performance of its obligations under the contract.

220. WMATA was bound by the implied covenant of good faith and fair dealing in performing its contractual obligations to Banneker under the Term Sheet, JDA and other documents.

221. WMATA's actions of stopping the negotiations of the joint development agreement (which would bind WMATA and Banneker to the Project) and forcing Banneker to enter into negotiations for a Revised Term Sheet, ultimately not approving the Revised Term Sheet or joint development agreement, interfered with Banneker's rights to develop the Site.

222. Additionally, by telling Banneker in November 2009 that the Board had instructed the WMATA staff to go out and get Best and Final Offers from the non-designated Selected Developers, WMATA deprived Banneker of its benefits and rights under the Term Sheet and negotiated joint development agreement.

223. Banneker has performed each and every act, condition, and covenant incumbent upon him in accordance with the terms of the Agreement, except as excused, waived, or prevented by the acts of WMATA.

224. As a direct result of the foregoing material breaches by WMATA, Banneker has suffered monetary damages, with interest.

WHEREFORE, Banneker respectfully request this Court enter judgment in Banneker's favor and against WMATA and to:

- a) Award compensatory damages to Banneker, in an amount to be proven at trial, but believed to be in excess of \$100,000,000.00;
- b) Award further relief as justice may require.



**COUNT III – TORTIOUS INTERFERENCE WITH A PROSPECTIVE ECONOMIC  
ADVANTAGE  
(GRAHAM, ADLER, LAKRITZ, AND LAKRITZ ADLER)**

225. Banneker re-alleges and incorporates ¶¶ 1-224, inclusive, as if set forth fully herein.

226. Graham, Adler, LaKritz, and LaKritz Adler intentionally and willfully interfered with Banneker's contract with WMATA to develop the Site.

227. In early 2008, Graham and Adler knew that WMATA's staff recommended to the Board that Banneker become the Selected Developer for the Site.

228. On at least a dozen occasions, Graham met with WMATA staff, Board members and others to interfere with Banneker's rights.

229. Specifically, Graham intentionally interfered by directing Banneker's first development partner (Donatelli) to drop out of the Project and not be Banneker's co-development partner.

230. Immediately after Graham learned that Banneker's second development partner (Metropolis) had agreed to partner with Banneker on the Project, he called Merrick Malone, one of Metropolis's then-principals, and intentionally interfered by directing him to drop out of the partnership with Banneker, which Metropolis ultimately did, thus interfering with Banneker's prospective economic advantage.

231. Additionally, in April 2008, after WMATA's staff recommended that WMATA's Board approve Banneker as the Selected Developer for the Site, Graham, in a more than one-hour closed Executive Session of the WMATA Board, convinced the Board to push back consideration of Banneker's selection for no less than sixty (60) days in order for LaKritz Adler to attempt to either sale its interest to Banneker in an adjacent property or to allow LaKritz Adler to join Banneker's development team as the Graham-preferred development partner.

232. In May 2008, Graham used his position as a member of the D.C. Council to push Banneker's then-principal Williams to have Banneker drop out of the Florida Avenue WMATA project in exchange for Graham's support for Williams' D.C. lottery contract.

233. After Banneker's then-principal refused to agree to Graham's May 2008 quid pro quo and bid suppression scheme, in June 2008, and after WMATA's staff again recommended that WMATA's Board approve Banneker as the Selected Developer for the Site, Graham, in another closed Executive Session of the WMATA Board, attempted to convince the Board to push back Banneker's selection.

234. In May or June 2008, Graham required that Karim meet with him where Graham directed Karim to add LaKritz Adler to the Banneker Development Team, even though Banneker already had development partners.

235. In June 2008, after Graham, during a closed door Executive Session of the PDRE Committee, failed in his attempt to prevent Banneker's designation as the Selected Developer, made a motion (which the Board approved) that added an affordable housing component to the Florida Avenue deal, which dramatically decreased the value of Banneker's previously negotiated Term Sheet with WMATA.

236. Upon information and belief, after the Board approved the Initial Term Sheet between WMATA and Banneker, and upon learning that Banneker chose not to move forward with purchasing LaKritz Adler's rights to an adjacent parcel, in the fall of 2008, Graham, directed WMATA's staff to stop negotiations of the joint development agreement between WMATA and Graham.

237. And on the first day that Graham became Chairman of the Board (January 29, 2009), almost a full year after WMATA designated Banneker as the Selected Developer, Graham called

a meeting with WMATA staff regarding the Project and informed WMATA staff members, including Doggett, that it wanted LaKritz Adler to be involved in the Project<sup>53</sup>

238. Five “days later, on February 3, 2009, Adler called Doggett and stated that Graham had asked him to “make a deal” with Banneker whereby LaKritz Adler would join the Banneker Development Team as co-developer.<sup>54</sup>

239. Upon information and belief, during Banneker’s negotiations with WMATA, Graham unlawfully provided confidential Board information to LaKritz Adler about Banneker’s proposal with the intention of allowing LaKritz Adler to negotiate a deal with WMATA instead of Banneker.<sup>55</sup> Specifically, during a February 3, 2009 call with Adler, Doggett stated in a deposition with Bondi that “Adler spoke with specificity about Banneker[‘s] proposal, and that she did not know how he obtained the information.”<sup>56</sup>

240. During Banneker’s designation as the Selected Developer, LaKritz Adler’s principals (Adler and LaKritz) called Doggett “every few months to discuss the Florida Avenue Project.”<sup>57</sup> During “these discussions, the principals of LaKritz Adler usually took the opportunity to promote their proposal for the Florida Avenue Property and provide negative information about Banneker Ventures.”<sup>58</sup>

241. Finally, in March 2010, Graham conspired with the other members of the Board, including Principal Directors Peter Benjamin, Mortimer L. Downey, Catherine Hudgins, Neil O. Albert, Elizabeth Hewlett and Christopher Zimmerman, WMATA Alternate Directors Michael

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<sup>53</sup> Bondi Report, p. 58

<sup>54</sup> Bondi Report, p. 58.

<sup>55</sup> See generally Bondi Report, Interview with Doggett.

<sup>56</sup> Bondi Report, p. 58.

<sup>57</sup> Bondi Report, p. 42, FN159.

<sup>58</sup> Bondi Report, p. 42, FN159.

Brown, William D. Euille, Tony Giancola, Gordon Linton, Jeffrey McKay and Marcell Solomon to “stop negotiations with Banneker Ventures during [an] executive session” of the Board.<sup>59</sup>

242. Graham’s, Adler’s, LaKritz’s, and LaKritz Adler’s intentional and willful actions were calculated to cause damage to Banneker, which prevented it from developing the Site, and were done with the unlawful purpose to cause damage and loss to Banneker, without right or justifiable cause.

243. As a direct and proximate cause of Graham’s, LaKritz’s, Adler’s and LaKritz Adler’s actions, Banneker has not been able to finalize the joint development agreement to develop the Site and has thereby been prevented from developing the Site.

WHEREFORE, Banneker respectfully request this Court enter judgment in Banneker’s favor and jointly and severally against Graham, Adler, LaKritz, and LaKritz Adler and to:

- a) Award compensatory damages to Banneker, in an amount to be proven at trial, but believed to be in excess of \$100,000,000.00;
- b) Award further relief as justice may require.

**COUNT IV – TORTIOUS INTERFERENCE WITH A CONTRACT  
(GRAHAM, ADLER, LAKRITZ AND LAKRITZ ADLER)**

244. Banneker re-alleges and incorporates ¶¶ 1-243, inclusive, as if set forth fully herein.

245. Banneker entered into an agreement with WMATA to allow it the exclusive right to negotiate an agreement to develop the Site.

246. Graham, Adler, LaKritz and LaKritz Adler were fully aware of the agreement between WMATA and Banneker.

247. Graham used the power and influence as a member of the Board, Chairman of the Board, Chairman of the PDRE Committee, and a member of the Council of the District of Columbia to

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<sup>59</sup> Bondi Report, p. 28, FN101.

induce the WMATA staff and Board to breach its contract to negotiate with Banneker, by among other things, directing the Staff to stop negotiations of the joint development agreement and negotiate a revised Term Sheet.

248. Adler, LaKritz and LaKritz Adler used their relationship with Graham to induce Graham and WMATA's staff and Board to breach its contract to negotiate with Banneker.

249. Graham improperly made these efforts in order to benefit a campaign donor of his and to improperly penalize persons that Graham believed were his political enemies.

250. During the period that Banneker was the Selected Developer, LaKritz and Adler intentionally called WMATA's real estate staff every few months to disparage Banneker while attempting to convince WMATA to designate it as the Selected Developer of the Site.

251. In doing so, Graham, LaKritz and Adler acted with malice.

252. Adler and LaKritz improperly made these efforts in order to benefit their firm, LaKritz Adler and themselves as principal owners of LaKritz Adler, so that they could be awarded the contract by WMATA to develop the Site.

253. As a direct and proximate result of Graham's, Adler's and LaKritz's actions, WMATA breached its contractual obligation to negotiate with Banneker.

WHEREFORE, Banneker respectfully request this Court enter judgment in Banneker's favor and jointly and severally against Graham, LaKritz, Adler and LaKritz Adler and to:

- a) Award compensatory damages to Banneker, in an amount to be proven at trial, but believed to be in excess of \$100,000,000.00;
- b) Award further relief as justice may require.

**COUNT V – UNJUST ENRICHMENT  
(WMATA)**

254. Banneker re-alleges and incorporates ¶¶ 1-253, inclusive, as if set forth fully herein.

255. Banneker paid WMATA \$100,000.00 upon submission of its response to a joint development solicitation. Upon executing a Term Sheet with WMATA, Banneker paid WMATA another \$100,000.00.

256. WMATA did accept the deposits paid to it by Banneker.

257. At the direction of WMATA's staff, Banneker provided WMATA with extensive site plan drawings, exhaustive budgets and projections for the Project, time and other considerations.

258. After WMATA's Board unlawfully tabled further negotiations of the joint development agreement or term sheet with Banneker, WMATA returned \$100,000.00 to Banneker but kept the other \$100,000.00 that Banneker had paid to it.

259. As a direct and proximate result of WMATA's actions, WMATA is unjustly enriched.

WHEREFORE, Banneker respectfully request this Court enter judgment in Banneker's favor and against WMATA and to:

- a) Award compensatory damages to Banneker, in an amount to be proven at trial, but believed to be in excess of \$100,000.00.
- b) Award further relief as justice may require.

**COUNT VI – UNLAWFUL RESTRAINT OF COMMERCE  
(GRAHAM, ADLER AND LAKRITZ)**

260. Banneker re-alleges and incorporates ¶¶ 1-259, inclusive, as if set forth fully herein.

261. Pursuant to D.C. Code § 28-4501 *et. seq.* and 15 USC 1 *et. seq.*, Graham, Adler and LaKritz unlawfully sought and did restrain Banneker's right to freely negotiate a final joint development agreement with WMATA.

262. In doing so, Graham, Adler and LaKritz sought to unlawfully control the outcome of the bid process after Banneker had already been selected as the developer of the Site and Graham did so in order to benefit LaKritz Adler, his favorite developer and a major campaign donor of his.

263. As a direct and proximate result of Graham's unlawful actions, Banneker suffered losses in the amount of \$100,000,000.00.

WHEREFORE, Banneker respectfully request this Court enter judgment in Banneker's favor and jointly and severally against Graham, LaKritz, Adler and LaKritz Adler and to:

- a) Award compensatory damages to Banneker, in an amount to be proven at trial, but believed to be in excess of \$100,000,000.00.
- b) Award further relief as justice may require.

#### **COUNT VII – FRAUD (WMATA)**

264. Banneker re-alleges and incorporates ¶¶ 1-263, inclusive, as if set forth fully herein.

265. WMATA actively sought and obtained the services of Banneker, the benefit of Banneker's labors, Banneker's expenditures and other valuable and significant benefits from Banneker by making various intentional misrepresentations and/or omissions to Banneker.

266. In doing so, WMATA, by and through its authorized agents acting within the scope of their authority and as part of a WMATA proprietary function, failed, when they had a duty to do so, to advise or otherwise inform Banneker that WMATA would never approve a joint development agreement between WMATA and Banneker. WMATA undertook such a course of conduct knowing that Banneker was laboring and expending considerable time, effort, energy, and expense on the understanding that WMATA would negotiate a joint development agreement with Banneker to develop the Site.

267. For example, on July 25, 2008, WMATA informed Banneker that it expected to finalize a joint development agreement by October 2008 in time for the Board to approve it at the December 2008 Board meeting. WMATA also requested that Banneker provide it with regular updates to its site plans for the Project.

268. At or about the time of making the foregoing representations, and as a result of these representations, WMATA knowingly obtained and accepted the benefit of services rendered, time and expense incurred, and funds advanced, by Banneker.

269. Banneker incurred time and expense, provided services, and advanced funds in reliance upon those representations.

270. The foregoing representations were false and constituted actionable misrepresentations, and WMATA was acting only to further the illegal quid pro quo bid rigging attempts of WMATA's then-Chairman of the Board of Directors, Graham.

271. WMATA did not inform Banneker any time that any of its representations were false, incomplete and/or misleading.

272. The foregoing misrepresentations and omissions were made intentionally and knowingly. The misrepresentations and omissions made by WMATA were done with knowledge of their falsity. In the alternative, to the extent that the foregoing misrepresentations and omissions were not intentional, WMATA is subject to liability for constructive fraud and/or negligent misrepresentation in making these misrepresentations and omissions.

273. The foregoing misrepresentations and omissions were material, since, based on those misrepresentations and omissions, Banneker took actions that they would not otherwise have taken, including but not limited to, incurring time and expense, and advancing funds to and for the benefit of WMATA.

274. The foregoing misrepresentations and omissions were intended by WMATA to induce reliance on the part of Banneker, including, among other things, to induce Banneker to take actions that it would not otherwise have taken, to incur time and expense it would not have



incurred, to advance and expend funds it would not have advanced and expended, and to provide services that it would not otherwise have provided.

275. The foregoing misrepresentations and omissions did induce reliance on the part of Banneker. Therefore, as a direct result of the foregoing misrepresentations and omissions, Banneker took actions and provided substantial and valuable services that it would not otherwise have provided.

276. The reliance on the part of Banneker upon the foregoing misrepresentations and omissions was reasonable and/or justifiable under the circumstances.

277. Banneker sustained serious damages as a result of its reliance upon the foregoing misrepresentations and omissions, and in an amount to be proven at trial, plus the reasonable attorneys' fees and costs incurred by Banneker in this lawsuit.

WHEREFORE, Banneker respectfully request this Court enter judgment in Banneker's favor and against WMATA and to:

- a) Award compensatory damages to Banneker, in an amount to be proven at trial, but believed to be in excess of \$100,000,000.00;
- b) Award further relief as justice may require.

**COUNT VIII – CIVIL CONSPIRACY  
(GRAHAM, ADLER, LAKRITZ, LAKRITZ ADLER AND WMATA)**

278. Banneker re-alleges and incorporates ¶¶ 1-277, inclusive, as if set forth fully herein.

279. Graham conspired with Adler and LaKritz to have Banneker withdraw from being considered by WMATA as the Selected Developer or in the alternative to have Banneker add LaKritz Adler to its team as a co-developer.

280. Graham conspired with Adler and LaKritz to have WMATA's Board delay Banneker's designation as the Selected Developer while LaKritz Adler was attempting to try to sell Banneker its option on an adjacent parcel.

281. Once negotiations between Banneker and LaKritz Adler ended in October 2008, Graham conspired with Adler and LaKritz to have WMATA's staff cease negotiations of the final joint development agreement and force Banneker to renegotiate another Term Sheet.

282. Thereafter, in 2009, Graham conspired with Adler and LaKritz to have O'Keefe devise a vehicle by which the project could be re-opened only to LaKritz Adler, another firm and Banneker.

283. O'Keefe did in fact advise Graham and the other Board members that the bid for the Florida Avenue site could be re-opened once the negotiation period between WMATA and Banneker expired.

284. In March 2010, Graham, acting on Adler and LaKritz's behalf, devised a plan with the other members of WMATA's Board, in which approval of a revised term sheet or joint development agreement between Banneker and WMATA was indefinitely tabled by WMATA's Board.

285. The WMATA board, being previously advised of Graham's intent and desire to facilitate the rebidding of the Project so as to allow his campaign contributor and preferred developer a then-sixth opportunity to gain a financial interest from the WMATA Project<sup>60</sup>, were complicit in

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<sup>60</sup> The first opportunity was when LaKritz Adler responded to WMATA's Joint Development Solicitation in October 2007. The second opportunity occurred in April or May 2008 when Graham directed Banneker to add LaKritz as its development partner. The third opportunity occurred in May 2008 when Graham tried to barter the D.C. lottery contract for Banneker's withdrawal from the WMATA project. The fourth opportunity occurred when Banneker and LaKritz and Adler tried to convince Banneker to purchase LaKritz Adler's option in an adjacent parcel. The fifth opportunity occurred when Graham (while serving as Chairman of the Board) and WMATA's Board asked WMATA's staff to go and get Best and Final Offers from the last three bidders (including LaKritz Adler who had more than a year earlier had been eliminated from consideration by WMATA's staff). Upon information and belief, the sixth consideration occurred when the Board allowed Banneker's negotiation period to expire allowing LaKritz

the conspiracy by agreeing in closed session to table the Banneker agreement for the purpose of allowing Banneker's exclusive right to "time out".

286. Banneker sustained serious damages as a result of the civil conspiracy committed by Graham, Adler, LaKritz, LaKritz Adler and WMATA.

WHEREFORE, Banneker respectfully request this Court enter judgment in Banneker's favor and jointly and severally against Graham, LaKritz, Adler, LaKritz Adler and WMATA and to:

- a) Award compensatory damages to Banneker, in an amount to be proven at trial, but believed to be in excess of \$100,000,000.00;
- b) Award further relief as justice may require.

#### **VI. RELIEF REQUESTED**

Wherefore, Plaintiff hereby sue Defendants JIM GRAHAM, JOSHUA A. ADLER, ROBB M. LAKRITZ, LAKRITZ ADLER DEVELOPMENT, WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY, jointly and severally, in the full amount of One Hundred Million Dollars (\$100,000,000.00), plus pre-judgment interest and costs, attorney fees and all other legal and proper relief which Plaintiff may be entitled.

#### **VII. JURY DEMAND**

Plaintiff respectfully demands a jury trial in the aforementioned matter.

Respectfully submitted,

\_\_\_\_\_/s/\_\_\_\_\_  
Brian K. McDaniel, Esq.  
D.C. Bar # 452807  
McDaniel & Associates, P.A.  
1025 First Street, S.E., Suite 1413  
Washington, DC 20003

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Adler to then submit an unsolicited proposal to WMATA for the Site. The seventh occurred occurred in the fall of 2010 when WMATA re-issued the joint development solicitation for the Site. When Graham was exiting the Board as a Principal Director, the eight consideration occurred when WMATA issued the solicitation again in 2011.

Telephone: (202) 331-0793  
Counsel for the Plaintiff